IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3315 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE UNITED INDIA INSURANCE CO. LTD. - Petitioner(s)

Versus

BHATIA RASIKLAL PUJALAL & 2 - Respondent(s)

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Appearance :
MS AVANI S MEHTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.
MR JV JAPEE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/02/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner –

insurance company has prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the Motor Accident Claim Tribunal (Aux.), Sabarkantha at Modasa (for short “the Tribunal”) dated 4-6-04 passed in Motor Accident Claim Petition No.973 of 02 below Exh-16 rejecting the application submitted by the petitioner to join the driver, owner and the insurance company of Safari Motorcycle bearing No.GJ-9-F–7870.

2. It appears from the record that respondent No.1 herein has filed Motor Accident Claim Petition No.973/02 before the learned Tribunal against the petitioner and respondent Nos.2 and 3 herein. In the said claim petition, the petitioner–insurance company submitted an application below Exh-16 to join the driver, owner and insurance company of the Safari Motorcycle, as according to the petitioner, the driver of the Safari Motorcycle was negligent and due to his negligence, the accident has taken place. The learned Tribunal by order dated 4-6-04 dismissed the said application by holding that considering the case on behalf of the claimant that the claimant was a

pillion driver and the driver of Auto Rickshaw bearing No.GJ-9-Y-1111 dashed the Safari Motorcycle from the back side and therefore, the driver of the Safari Motorcycle lost the balance and the claimant came to be injured and therefore the driver, owner and the insurance company of the Safari Motorcycle are not necessary parties. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Ms Avani Mehta, learned advocate appearing on behalf of the petitioner has submitted that whether the driver of the Safari Motorcycle was negligent or not, was not required to be considered by the Tribunal while deciding the application below Exh-16, which was for joining the driver, owner and insurance company of the Safari Motorcycle and whether the driver of the Safari Motorcycle was negligent or not, is required to be considered at the time of trial and/or deciding the main claim petition on adducing and leading evidence and therefore it is requested to allow the present Special Civil

Application.

4. Ms Ami Patel, learned advocate for Mr. Japee, learned advocate appearing on behalf of contesting respondent No.1 has tried to support the order passed by the Tribunal and has submitted that considering the fact that *prima facie*, it was found by the Tribunal that the driver of the auto rickshaw was negligent in driving the rickshaw and therefore, the Tribunal has rightly rejected the application submitted by the petitioner and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard learned advocate appearing for the parties.

6. It is the contention of the petitioner that the driver of the Safari Motorcycle was also negligent in driving the Safari Motorcycle due to which the accident took place and therefore, the driver, owner and the insurance company of the Safari Motorcycle are necessary parties for proper adjudication of the

claim petition. The Tribunal rejected the said application on the ground that driver of the rickshaw was negligent and due to which the accident has taken place and that driver of the Safari Motorcycle was not negligent. It is required to be noted that whether the driver of the Safari Motorcycle was negligent or not, was not required to be decided while deciding the application for joining party. Whether the driver of the Safari Motorcycle and/or the driver of the auto rickshaw were negligent and to what extent they were negligent, is required to be considered and decided by the Tribunal at the time of deciding the claim petition on adducing and leading proper evidence.

7. Under the circumstances, the order passed by the learned Tribunal dated 4-6-04 in Motor Accident Claim Petition No.973/02 below Exh-16 is hereby quashed and set aside and the application below Exh-16 is allowed. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

shekhar/-